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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,609	11/29/2001	Takao Takiguchi	684.3318	2294
5514	7590	10/15/2003	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			KIELIN, ERIK J	
			ART UNIT	PAPER NUMBER
			2813	

DATE MAILED: 10/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/995,609	
	Examiner Erik Kielin	Art Unit 2813

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(e). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11 July 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 4-8 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)                    4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    5) Notice of Informal Patent Application (PTO-152)  
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.                    6) Other:

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11 July 2003 has been entered.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent Application 2002/0034656 A1 (**Thompson et al.**).

**Thompson** discloses a metal coordination compound, specifically the compound labeled “vinylpyridines,” represented by the following formula indicated as (1), wherein M denotes Ir or P; n is 3 when the metal is Pt or Ir; R<sub>1</sub> and R<sub>2</sub> independently denote a hydrogen or a linear or branched alkyl group having 1-20 carbon atoms and capable of having a -CO-O- or -O-CO-; and CyN denotes a cyclic group containing nitrogen atom connected to M. The “vinylpyridine”

ligand shown in Fig. 49 is CyN showing R<sub>1</sub> as a hydrogen (as the claim is presently amended to include) and R<sub>2</sub> as an alkyl group. (See Fig. 49; paragraphs [0048], [0049], [0052], and [0183].)

Note in particular, that paragraph [0052] states in pertinent part,

"This invention is further directed to organometallic complexes of formula L L'L" M, wherein L, L', and L" are the same (represented by L<sub>3</sub>M) or different (represented by L L'L" M), wherein L, L', and L" are bidentate, monoanionic ligands, wherein M is a metal which forms octahedral complexes, is preferably a member of the third row of transition metals, more preferably Ir or Pt." (Emphasis added.)

#### ***Response to Arguments***

2. Applicant's arguments filed 11 July 2003 (Paper No. 17) have been fully considered but they are not persuasive.

In response to Applicant's continued traversal of the restriction requirement, Applicant did not *properly* traverse the restriction requirement in Applicant's election filed 8 August 2002, nor did Applicant timely petition the restriction requirement. The restriction requirement is final and will not be considered further. This does not mean Applicant would not be entitled to rejoinder of the device using the compound should the compound be found allowable. However, the compound is **not** allowable as presently claimed. Applicant has already received two actions on the merits. The non-elected invention will not be considered.

Applicant argues that the ligands shown in Fig. 49 are limited for use in L<sub>2</sub>MX compounds only. Examiner respectfully but emphatically disagrees. Thompson discloses L<sub>3</sub>M, wherein each ligand L is the same or different. It does not logically follow that that the statement in paragraph [0109] in Thompson that other L and X ligands suitable for L<sub>2</sub>MX somehow suggests that the L ligands are (1) unknown (i.e. not disclosed, taught, or suggested) or (2) unsuitable for the L<sub>3</sub>M compounds. Nowhere does Thompson suggest that the suitable ligands

for L<sub>2</sub>MX are unsuitable for L<sub>3</sub>M. In short L is L. Accordingly the "L" ligands in Fig. 49 are suitable for the L<sub>3</sub>M compounds.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erik Kielin whose telephone number is 703-306-5980. The examiner can normally be reached on 9:00 - 19:30 on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Whitehead, Jr., can be reached at 703-308-4940. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9318 for regular communications and 703-872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.



Erik Kielin, Ph.D.  
Primary Examiner  
October 14, 2003